

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 24458-0-III

Respondent,

Division Three

v.

SHAUN WEBB,

UNPUBLISHED OPINION

Appellant.

BROWN, J.—Shaun Webb was convicted of first degree assault after hitting Wayne Howry, a convenience store clerk, in the back of the head with a ball peen hammer. Mr. Webb appeals arguing evidence sufficiency. We affirm.

FACTS

Early on February 19, 2005, Shaun Webb entered the Exxon Qwik Stop on Wellesley in Spokane, Washington. The cashier, Mr. Howry, asked Mr. Webb to leave because he had been suspected of shoplifting in the past. When Mr. Webb refused, Mr. Howry informed Mr. Webb that he would call 911. Mr. Webb insisted he had

permission to be there from the manager. When Mr. Howry picked up the phone to dial 911, Mr. Webb went around the counter and hit Mr. Howry in the back of the head with a ball peen hammer. Mr. Howry disarmed Mr. Webb and placed the hammer on the counter. During a struggle, Mr. Webb struck Mr. Howry in the mouth with his fist and left the store. Much of the altercation was witnessed by a customer, Sarah Southerland, who arrived at the store during the altercation.

No property loss or damage was reported. Mr. Howry was treated by the paramedics at the scene and was urged to seek medical attention. However, Mr. Howry waited to go to the emergency room until after he completed his shift.

Mr. Howry did not lose consciousness or show evidence of a fracture or concussion, but sustained a four-centimeter laceration to the scalp and a three-centimeter laceration to the upper lip, both requiring multiple sutures. The emergency room doctor testified that a blunt impact to the head could cause brain injury, memory loss, neurological problems, and even death.

Mr. Webb was charged with and convicted of first degree assault. Mr. Webb attempted to show at trial that second degree assault was more appropriate. He appeals alleging insufficient evidence of “great bodily harm” to support his conviction.

ANALYSIS

The issue is whether sufficient evidence supports Mr. Webb’s conviction for first degree assault.

We review a challenge to the sufficiency of the evidence in a light most favorable to the State. *State v. Salinas*,

119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An evidence sufficiency challenge admits the truth of the State's evidence and all reasonable inferences. *Id.* We defer to the trier of fact and will affirm where the essential elements of the crime can be found beyond a reasonable doubt. *State v. Walton*, 64 Wn. App. 410, 415, 824 P.2d 533 (1992). Circumstantial evidence and direct evidence are equally reliable and either is sufficient to support a conviction. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). See *State v. Bernson*, 40 Wn. App. 729, 733, 700 P.2d 758 (1985); *State v. Bauman*, 77 Wn.2d 938, 942, 468 P.2d 684 (1970) ("Circumstantial evidence alone will support a criminal conviction.").

Here, Mr. Webb was charged under a section of the first degree assault statute which provides that a person is guilty of assault in the first degree if he, (1) with intent to inflict great bodily harm, (2) assaults another (3) with a firearm or other deadly weapon. RCW 9A.36.011(1)(a); *State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994).

Mr. Webb does not dispute he attacked Mr. Howry with a ball peen hammer, nor does he argue the hammer was not a deadly weapon. Rather, he argues no evidence shows the force used was likely to inflict great bodily harm because no evidence shows Mr. Howry actually sustained "great bodily harm." But, first degree assault requires an *intent* to inflict great bodily harm. RCW 9A.36.011(1)(a). Assaulting another with a deadly weapon does not require evidence of harm or injury to satisfy the assault element. RCW 9A.36.011(1). Thus, the jury could convict on first degree assault even

without proof of injury.

Mr. Webb's reliance on *State v. Pierre*, 108 Wn. App. 378, 31 P.3d 1207 (2001), is misplaced. In *Pierre*, the victim was not assaulted with a weapon of any kind; rather he was kicked numerous times in the head. Thus, the jury was instructed that it had to find that the victim was assaulted by any force or means likely to produce great bodily harm or death. The fact that great bodily harm actually occurred as a result of the force used satisfied that element. Here, a deadly weapon by its very nature is likely to produce great bodily harm or death.

Viewing the evidence and the inferences in a light most favorable to the State, sufficient evidence shows intent to inflict great bodily harm. Mr. Webb wielded a ball peen hammer to strike Mr. Howry in the back of the head. The medical testimony showed a blunt impact to the head could cause brain injury, memory loss, neurological problems, and even death. From this evidence, the jury could reasonably infer Mr. Webb intended to inflict great bodily harm on Mr. Howry. Therefore, sufficient evidence exists for conviction.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

No. 24458-0-III
State v. Webb

Schultheis, A.C.J.

Kato, J.